

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JEFFERSON-PILOT INSURANCE
COMPANY,

Plaintiff,

vs.

CHRISTOPHER L. KEARNEY,

Defendant.

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Case No. C-1-02-479

(Judge Spiegel)

**PLAINTIFF'S MOTION FOR
EXTENSION OF TIME**

Now comes newly substituted counsel for Plaintiff, Wood & Lamping LLP, and moves for an extension of time to respond to Defendant's Motion for Summary Judgment, as well as an extension of time to take Plaintiff's deposition. This extension is required so that counsel can apprise itself as to the status of the case and adequately prepare both for Plaintiff's deposition and responding to the Motion for Summary Judgment. It is also anticipated that Plaintiff will file its own Motion for Summary Judgment. The substitution of counsel is due to the health of prior counsel, Geraldine Johnson. Ms. Johnson is unable to continue representation

of Jefferson-Pilot and Jefferson-Pilot has asked Wood & Lamping to substitute as counsel. A Memorandum in support of this motion is attached.

Respectfully submitted,

s/Amy Gasser Callow

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Trial Attorneys for Plaintiff

MEMORANDUM IN SUPPORT

Plaintiff Jefferson-Pilot was represented by Geraldine Johnson and the law firm of Roetzel & Andress. Ms. Johnson is familiar with disability insurance claims and experienced in the litigation of these lawsuits. Unfortunately, Ms. Johnson's health has rendered her unable to continue in her representation of Jefferson-Pilot. Ms. Johnson has filed a Notice of Withdrawal which is incorporated herein by reference. Jefferson-Pilot has, therefore, asked the law firm of Wood & Lamping to enter as counsel on its behalf. Wood & Lamping has agreed and filed its Notice of Appearance and Substitution of Counsel.

In light of the unfortunate circumstances, counsel for Jefferson-Pilot asked counsel for Defendant to cooperate with regard to both the scheduling of Defendant's deposition as well as Plaintiff's response to Defendant's Motion for Summary Judgment. The deposition of Christopher Kearney is scheduled for February 5, 2004. New counsel for Jefferson-Pilot is unable to attend that deposition at this late date. Even if it were possible to attend, however,

counsel could not be prepared to take the deposition of a party in this case. Counsel for Plaintiff needs to review the facts of the case and the pleadings filed to date in order to prepare for the deposition.

Counsel for Plaintiff has attempted to resolve this matter extrajudicially. Attached as Exhibit 1 is February 3, 2004, correspondence sent to counsel for Defendant, Eugene Matan. Mr. Matan and his co-counsel, Mike Roberts, have been advised of Ms. Johnson's physical condition and her inability to continue representation. Despite this information, they refused to reschedule Defendant's deposition scheduled for February 5, 2004. They have also refused Plaintiff's request for an extension of time to respond to their pending Motion for Summary Judgment.

An extension of time will not prejudice either party. Discovery has already been extended at Defendant's request. Discovery is open in this case until May 1, 2004 so this extension is within the current discovery period. In light of the fact that Defendant continues to receive benefits, a brief extension of additional time to new counsel will not prejudice his position. Moreover, it is anticipated that once Defendant's deposition is taken, Plaintiff will in a position to file its own dispositive motion and resolve, or at least narrow, several of the outstanding issues in this case.

It is indeed unfortunate that Ms. Johnson cannot continue her representation of Jefferson-Pilot. It is also unfortunate that Defendant does not see fit to extend common professional courtesy to Plaintiff and its counsel. New counsel must be afforded an opportunity to come up to speed with the facts and issues of this case. Plaintiff is only asking for a reasonable amount of time in which to do so, but has been met with opposition from Defendant's counsel. Counsel for Plaintiff, therefore, seeks an order from the Court rescheduling

Defendant's deposition at a time convenient to both parties and for an extension of time to respond to Defendant's Motion for Summary Judgment.

Respectfully submitted,

s/Amy Gasser Callow

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been filed with the Court by electronic means on this 4th day of February 2004. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/Amy Gasser Callow
Amy Gasser Callow, Esq.

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